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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/633,742	08/04/2003	Kevin Gene Peters	9045M	1253
27752 7590 02/09/2006		EXAMINER		
THE PROCTER & GAMBLE COMPANY			NASHED, NASHAAT T	
INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			ART UNIT	PAPER NUMBER
			1656	
			DATE MAILED: 02/09/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary		Application No.	Applicant(s)			
		10/633,742	PETERS ET AL.			
		Examiner	Art Unit			
		Nashaat T. Nashed, Ph. D.	1656			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
WHICHEN - Extensions after SIX (6 - If NO perior - Failure to re Any reply re	ENED STATUTORY PERIOD FOR REPLY /ER IS LONGER, FROM THE MAILING DA of time may be available under the provisions of 37 CFR 1.13 of MONTHS from the mailing date of this communication. If for reply is specified above, the maximum statutory period we ply within the set or extended period for reply will, by statute, seceived by the Office later than three months after the mailing and term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim rill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONEI	l. lely filed the mailing date of this communication. (35 U.S.C. § 133).			
Status						
1)⊠ Res	Responsive to communication(s) filed on <u>04 August 2003</u> .					
, 	This action is FINAL . 2b)⊠ This action is non-final.					
	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Disposition o	f Claims					
4a) 0 5)∭ Clai 6)∭ Clai 7)∭ Clai	m(s) <u>1-17</u> is/are pending in the application. Of the above claim(s) is/are withdraw m(s) is/are allowed. m(s) is/are rejected. m(s) is/are objected to. m(s) <u>1-17</u> are subject to restriction and/or expressions.	vn from consideration.				
Application F	apers					
10)∭ The Appl Rep	specification is objected to by the Examiner drawing(s) filed on is/are: a) _ acception accept accept accept and accept and accept accep	epted or b) objected to by the Edrawing(s) be held in abeyance. See on is required if the drawing(s) is obj	e 37 CFR 1.85(a). ected to. See 37 CFR 1.121(d).			
Priority unde	r 35 U.S.C. § 119					
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
Attachment(s)	of control of the district of	. □				
2) Notice of D 3) Information	references Cited (PTO-892) raftsperson's Patent Drawing Review (PTO-948) Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal Pa 6) Other:				

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14, drawn to a method of identifying agent for treating angiogenesis, classified in class 435, subclass 21.
- II. Claim 15, drawn to a method of testing in a non-human animal for an agent that treat angiogenesis, classification is unknown because the specification does not exemplify or identify any agent to be tested.
- III. Claim16, drawn to a method of modulating angiogenesis using a modulator, classification is unknown because the specification does not exemplify or identify any agent to be tested.
- IV. Claim 17, drawn to a pharmaceutical composition comprising a modulator, classification is unknown because the specification does not exemplify or identify any agent to be tested.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are independent methods having different steps and product.

Inventions IV and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the modulator of HPTPbeta can be identified by different method such as determining the three dimensional structure of HPTPbeta and design an agent which would bind HPTPbeta.

Inventions II and IV are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the modulator of HPTPbeta can be identified by different method such as determining the three dimensional structure of HPTPbeta and design an agent which would bind HPTPbeta.

Inventions III and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially

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different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the method of modulating angiogenesis can be treated by different agent such as surgical procedure.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention: (a) HPTPbeta: SEQ ID NO: 2, 9, 15, and 16; (b) VEGFR2: SEQ ID NO: 6 and 11; and (c) Tie-2: SEQ ID NO: 8 and 13

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits [select one sequence from each (a), (b), and (c)] to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, 6, 7, 8, 9, 13, and 14 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP §

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821.04. Process claims that depend from or otherwise include all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder.

Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nashaat T. Nashed, Ph. D. whose telephone number is 571-272-0934. The examiner can normally be reached on MTWTF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen M. Kerr can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nashaat T. Nashed, Ph. D.

Primary Examiner Art Unit 1656